

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 02-0431  
SALES/USE TAX  
For The Tax Periods: 1999 through 2001**

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**ISSUES**

**I. Sales Tax – Unitary Transactions**

**Authority:** IC 6-2.5-2-1, IC 6-8.1-3-1, IC 6-8.1-1-1, IC 6-8.1-3-12, IC 6-8.1-4-2, IC 6-2.5-4-9, 45 IAC 2.2-4-25, 45 IAC 2.2-3-12, 50 IAC 4.3-4-10. 45 IAC 2.2-1-1.

Taxpayer protests the Department's assessment of sales tax after they reported tax due in a manner prescribed by an auditor who conducted a previous audit.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state corporation which manufactures and installs signs. The manufacturing is completed at Taxpayer's out-of-state headquarters. The signs are prepared to custom order or to the specifications of various chain store clients. The installation and the associated preparation work is performed at the customer's location. Taxpayer also provides repair services for its clients and the work is usually performed at the client's location by Taxpayer's out-of-state employees.

Taxpayer was audited by the Department of Revenue in 1987 for the periods of 1982 through 1985. During the audit, the auditor determined that Taxpayer was a contractor making improvements to realty and instructed Taxpayer to collect sales tax on only the materials portion of its sign sales/installation transactions.

In the current sales/use tax audit for the periods of 1999 through 2001, the auditor determined that the signs are not considered realty and that Taxpayer is required to collect sales tax on all elements of the unitary transaction. The auditor "grossed up" the material cost to arrive at a total manufactured cost and assessed sales tax on the difference between the manufactured costs and the cost of materials which Taxpayer remitted. Taxpayer now protests the recent assessments. More facts supplied as necessary.

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**I. Sales Tax: Unitary Transactions**

## **DISCUSSION**

Taxpayer, an out-of-state corporation, is in the business of manufacturing and installing outdoor signs. The signs are prepared to custom order or to the specifications of various chain store clients. The installation and the associated preparation work is performed at the customer's location. Taxpayer also provided repair service for its clients and the work is performed at the client's location by Taxpayer's out-of-state employees.

Taxpayer was audited for the periods of 1982 through 1985. During that audit, the auditor determined that Taxpayer was a contractor based on the assumption that the signs became improvements to realty. Taxpayer reported Indiana contracts which were subject to tax as "sales" instead of reporting them as "contractor's materials". The auditor accepted Taxpayer's method of reporting due to the record keeping system of Taxpayer, however, the auditor advised Taxpayer how to report sales/use tax as a contractor. The auditor made adjustments assessing sales/use tax on "materials" used on Indiana jobs which Taxpayer did not report.

Subsequently, Taxpayer was audited for the periods of 1999 through 2001. During this audit, the auditor found that the signs were not improvements to realty and that tangible personal property including fabrication and assembly were subject to tax as a unitary transaction.

"An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana." IC 6-2.5-2-1. Also, the Department of Revenue has the primary responsibility for the administration, collection, and enforcement of listed taxes. IC 6-8.1-3-1. Sales and use taxes are included in the listed taxes. IC 6-8.1-1-1. Consequently, the Department of Revenue may audit any returns filed with respect to sales/use tax. IC 6-8.1-3-12. Specifically, IC 6-8.1-4-2(a) states:

The division of audit may:

- (1) have full prompt access to all local and state official records;
- (2) have access, through the data processing offices of the various state agencies, to information from government and private sources that is useful in performing its functions;
- (3) inspect any books, records, or property of any taxpayer which is relevant to the determination of the taxpayer's tax liabilities;
- (4) detect and correct mathematical errors on taxpayer returns;
- (5) detect and correct tax evasion; and
- (6) employ the use of such devices and techniques as may be necessary to improve audit practices.

Regarding contractors, IC 6-2.5-4-9 states:

- (a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:
  - (1) is to be added to a structure or facility by the purchaser; and

- (2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.
- (b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

In addition, 45 IAC 2.2-4-25 defines a contractor as “any person engaged in converting construction material into realty. The term ‘contractor’ refers to general or prime contractors, subcontractors, and specialty contractors, including but not limited to persons engaged in building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction.”

As a contractor, Taxpayer would be liable for sales tax only on the materials used. 45 IAC 2.2-3-12 states in relevant part:

- (d) A person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchaser price of all material so used.
- (e) A person selling tangible personal property to be used as an improvement to real estate may enter into a completely separate contract to furnish the labor to install or construct such improvement, in which case the sales tax shall be collected and remitted by such seller on the materials sold for this purpose. Such sale of materials must be identifiable as a separate transaction from the contract for labor. The fact that the seller subsequently furnished information regarding the charges for labor and material used under a flat bid quotation shall not be considered to constitute separate transactions for labor and material.

From the aforementioned statutes, it is clear that in order to be considered a contractor, Taxpayer must be making an improvement to realty. Specifically, the signs Taxpayer installs must be considered real property. 50 IAC 4.3-4-10(e) (*formerly* 50 IAC 2.2-3-1(69)) states that signs including supports and foundations are considered personal property. Although the regulation is not definitive for sales tax purposes, it is influential. The signs that Taxpayer installs are specific to the businesses to whom they are sold. Typically, business owners do not intend to leave the sign in place beyond the life of the business and are removed when the business leaves in much

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the same way as booths or shelves. Here, the signs are considered personal property for sales/use tax purposes.

During the current audit, the auditor correctly realized Taxpayer was not a contractor and made adjustments in keeping with 45 IAC 2.2-1-1(a) to assess sales tax on the taxable but untaxed amounts. 45 IAC 2.2-1-1(a) states: “For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.”

Taxpayer argues that the current assessments are unreasonable because they relied on the previous auditor’s recommendations. The current auditor was simply ensuring that Taxpayer was in compliance with the sales tax laws of Indiana pursuant to IC 6-8.1-3-1 and IC 6-8.1-3-12. The assessments in the first audit were the result of unreported sales whereas the current audit assessments resulted in the manner Taxpayer invoiced their Indiana customers. Taxpayer was assessed in the first audit only on the unreported materials from their sales and not assessed for the combined selling charge. Nevertheless, in the Explanation of Adjustments for the 1982 through 1985 audit, the auditor stated that “[t]axpayer is a contractor” and “[t]he taxpayer was advised of the correct method of reporting for the future.” Taxpayer complied with these directions. Consequently, Taxpayer’s protest of the assessments is sustained. However, Taxpayer is not a contractor and should collect and remit sales/use tax accordingly.

### **FINDING**

Taxpayer’s protest is sustained in part and denied in part. Taxpayer’s protest of the current liabilities is sustained, however, Taxpayer is not considered a contractor and will prospectively collect and remit sales/use accordingly.